

| <b>Notice of Allowability</b> | <b>Application No.</b>      | <b>Applicant(s)</b> |  |
|-------------------------------|-----------------------------|---------------------|--|
|                               | 09/325,963                  | ALBRECHT ET AL.     |  |
|                               | Examiner<br>Victor S. Chang | Art Unit<br>1771    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Appeal Brief filed 7/14/2005.
2.  The allowed claim(s) is/are 29-33 and 36.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Sean J. Edman on 3/6/2006.

The application has been amended as follows:

#### **IN THE CLAIMS**

In claim 1, line 9, change the term "an unfoamed" to --a ruptured unfoamed--.

Withdrawn process claims 1-12 and 18-24 are cancelled.

#### ***Reasons for Allowance***

2. The following is an examiner's statement of reasons for allowance:

The primary reason for allowance of the claims is Applicants' agreement to amend the structural limitation of outer skin layers as "... comprise a ruptured unfoamed, polymeric material". More particularly, neither the cited prior art references of Lindquist or Watson teaches or suggests forming outer skin layers of ruptured unfoamed polymeric material over the surface of a breathable foam core layer, nor is there an obvious motivation to include such solid or unfoamed outer layers to the foam core layer prior to a foam cell rupturing process. As such, this Application is allowed upon Applicants' agreement to include the necessary structural element of "ruptured

"unfoamed" to the skin layers, as set forth above. Finally, it should be noted that while it is known that a conventional process of making a foamed layer usually forms a skin or surface layer having smaller cells, however, it is not the same as an unfoamed (solid) skin layer as claimed, as evidenced by the teachings of Steward et al. (US 4781774), which shows that conventional method tends to create a foam core having increased density at the upper and lower portions and decreased density at the center portion. This density variation results in a closed cellular structure of relatively large size in the center portion creating a less dense portion and a closed cellular structure at or near the surfaces (skins) including the top and bottom portions having a smaller cell size creating a more dense portion (column 1, lines 25-33).

### ***Conclusion***

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Victor S Chang*  
Victor S Chang  
Examiner  
Art Unit 1771

3/6/2006